SUPREME COURT OF THE UNITED STATES.

No. 448.

A. B. WOOD, PLAINTIFF IN ERROR,

vs.

DE FORREST RICHARDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALABAMA.

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1 *Affidavit.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Alabama.—Term, 1868.

A. B. WOOD, plaintiff,
vs.
DE FORREST RICHARDS, defendant.

THE STATE OF ALABAMA, *Mobile County:*

Personally appeared before me, N. W. Trimble, clerk of the circuit court of the United States for the southern district of Alabama, W. G. England, agent the plaintiff, A. B. Wood, who, being duly sworn, says that the property sued for in this suit and named in the complaint filed belongs to the plaintiff.

(Signed) WM. G. ENGLAND.

Subscribed and sworn to before me this the 13th day of March, 1868.

N. W. TRIMBLE, *Clerk.*

Filed this 13th day of March, 1868.

N. W. TRIMBLE, *Clerk.*

2 *Detinue bond.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Alabama.—April term, 1868.

Know all men by these presents, that we, W. G. England and S. S. Webb and B. R. Pierce, of the county of Mobile, State of Alabama, are held and firmly bound unto De Forrest Richards in the sum of twenty thousand dollars, to be paid to the said De Forrest Richards, his certain attorney, executor, administrator, or assigns; for which payment, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

The condition of the above obligation is such, that, whereas, A. B. Wood has, the day of the date hereof, sued out a writ of detinue for the following personal property, viz: One mill and band, five gins, one cotton cleaner, one pair of cotton balances, one bay horse Bill, one sorrel mare, one bay mare "Daisy," two sorrel colts two years old, one two-horse wagon and bed, one pair of andirons, six chairs, and one looking-glass, three tables, one tent, four iron wedges, two lanterns, one ward-
3 robe, one hand axe, one bedstead and bedding, one bucket, two pair sheep shears, two pair stilliards, one corn-sheller, one rope and pulley and bucket, two scythes' sneaths, one scythe, two brier scythes, one lot of grass rope, two iron pots, one large pot, one oven and lid, one skillet, one tea-kettle, one coffee-mill, one milk-pan, one lot of crockery, knives and forks, four six-mule wagons, one Jersey wagon, three fodder racks, one truck wagon, one horse cart, one grindstone and hangings, one lot of boards, one hay-cutter, three sets of stretchers, one stretcher chain, one fifth chain, three augurs, one saw, one plane, three tin measures, one half bushel, three barrels shelled corn, one pair of counter scales, one pair of balances, six rawhides, three blue plows, one wood work for wagon, eleven double-sweep stocks, twelve double-sweep iron plows,

twenty-nine single-sweep stocks, forty-six single-sweep points, six scrapers & stocks, eight cotton openers and points, nine cotton coverers, one iron wheel, and lot of old iron, one lot of cotton baskets, twenty-four single plows, twenty-two double plows, fifty-six swingle-trees, three scooter points, one extra wheel for wagon, twenty-four clevices, eighteen double-trees, thirty-three hoes, five spades, three shovels, sixty-two new shuck collars,
4 thirty-nine sets of plow gear, one bellows, one anvil, one vice, and lot of blacksmiths' tools, one lot of timber for wagon wheels, about twelve hundred bushels of corn, about five thousand pounds of fodder, four hogs, fourteen cows, four young cattle, two bulls, eight goats, four sheep, one cross-cut saw, one broad-axe, one brown horse, one barrel of molasses, one hundred and fifty pounds of meat, one lot of tobacco, one lot of salt, four stacks of fodder by a mule lot, one stack of fodder in the field, thirty-eight mules, by names, Zimmer, Laura, Kit, Colly, Albert, Tob, Clara, Jeff, Maria, Peter, Jack, Pleas, Pol, Eliza, Fan, Butler, Sally, Beck 1, Beck 2, John, Logan, Peter, (black,) Lizzy, Peter, (white,) Frank, Dick, Gin, Roddy, (old,) Roddy, (young,) Inde 1, Inde 2, Margaret, (black,) Peg, Eliza, Ann, Sally, Zeke, Ann Harriet, one bay horse, called the Marsh horse, all on the plantation called the El Dorado Place, in Wilcox County, cultivated in 1867 by J. De F. Richards; also all the stock of any kind and description now on the said El Dorado Place, consisting of fifty mules, cattle, &c., or which was on said place on the 9th of March, 1867, all of the value of ten thousand dollars; and whereas the above-bounden W. G. England, agent of said A. B. Wood, has made affidavit that the property aforesaid sued for belongs to the plaintiffs, A. B. Wood, and has thereupon obtained a writ of seizure for said property; now, if the said plaintiff, A. B. Wood, fails in the aforesaid suit, and pays the defendant such costs and damages as he may sustain by the wrongful complaint, then this obligation to be void; otherwise to remain in full force and effect.

(Signed) WM. G. ENGLAND. [SEAL.]
S. S. WEBB. [SEAL.]
B. R. PIERCE. [SEAL.]

In presence of—

Approved March 13th, 1868.

N. W. TRIMBLE,
Clerk U. S. Ct. Sou. Dist. Ala.

Filed March 13th, 1868.

N. W. TRIMBLE, *Clerk.*

5 *Summons.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Alabama.

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to summon De Forrest Richards, who is a citizen of the State of Alabama, to appear before the circuit court aforesaid, at the place of holding said court at Mobile, on the 2d Monday of April next, then and there to answer the complaint of A. B. Wood, who is a citizen of the State of New York, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme

[L. S.] Court of the United States, and the seal of said circuit court, this fourth Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued the 13th day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Attest: N. W. TRIMBLE,
Clerk C. C. Southern District of Alabama.

6 UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Alabama.—April term, 1868.

A. B. WOOD, plaintiff,
vs.
DE FORREST RICHARDS, defendant.

The plaintiff, who is a citizen of the State of New York, claims of the defendant, who is a citizen of the State of Alabama, the following personal property, viz: One mill and band, five gins, one cotton cleaner, one pair of cotton balances, one bay horse "Bill," one sorrel mare, one bay mare "Daisy," two sorrel colts two years old, one two-horse wagon and bed, one pair of andirons, six chairs, and one looking-glass, three tables, one tent, four iron wedges, two lanterns, one wardrobe, one hand-axe, one bedstead and bedding, one bucket, two pair of sheep shears, two pair of stilliards, one corn-sheller, one rope and pulley and bucket, two scythes' sneaths, one scythe, two brier scythes, one lot of grass rope, two iron pots, one large pot, one oven and lid, one skillet, one tea-kettle, one coffee-mill, one milk-pan, one lot of crockery, knives and forks, four six-mule wagons, one Jersey wagon, three fodder racks, one truck
7 wagon, one horse cart, one grindstone and hangings, one lot of boards, one hay-cutter, three sets of stretchers, one stretcher chain, one fifth chain, three augurs, one saw, one plane, three tin measures, one half bushel, three barrels shelled corn, one pair counter scales, one pair of balances, six rawhides, three blue plows, one wood work for wagon, eleven double-sweep stocks, twelve double-sweep iron plows, twenty-nine single-sweep stocks, forty-six single-sweep points, six scrapers and stocks, eight cotton openers and points, nine cotton coverers, one iron wheel, and lot of old iron, one lot of cotton baskets, twenty-four single plows, twenty-two double plows, fifty-six swingle-trees, three scooter points, one extra wheel for wagon, twenty-four clevices, eighteen double-trees, thirty-three hoes, five spades, three shovels, sixty-two new shuck collars, thirty-nine set of plow gear, one bellows, one anvil, one vice, and lot of blacksmith tools, one lot of timber for wagon wheels, about twelve hundred bushels of corn, about five thousand pounds of fodder, four hogs, fourteen cows, four young cattle, two bulls, eight goats, four sheep, one cross-cut saw, one broad-axe, one brown horse, one barrel of molasses, one hundred and fifty pounds of meat, one lot of tobacco, one lot of salt, four stacks of fodder by a mule lot, one stack of fodder in the
8 field, thirty-eight mules, by names, Zimmer, Laura, Kit, Colly, Albert, Tob, Clara, Jeff, Maria, Peter, Sock, Pleas, Pol, Eliza, Fan, Butler, Sallie, Beck, Beck 1, Beck 2, John, Logan, Peter, (black,) Lizzie, Peter, (white,) Frank, Dick, Gin, Reddy, (old,) Reddy, (young,) Inde 1, Inde 2, Margaret, (black,) Peg, Eliza, Ann, Sallie, Zeke, Ann Harriet, on bay horse, called the Marsh horse, all on the plantation called the El Dorado Place, in Wilcox County, cultivated in 1867 by J. De F. Richards; also all the stock of any kind and description now on the said El Dora Place, consisting of fifty mules, cattle, &c., or which was on

said place on the 9th of March, 1867, all of the value of about ten thousand dollars, with the value of the hire or use thereof during the detention, viz., from the sixth day of March, 1868.

SMITHS & HERNDON, *Plff's Attys.*

I acknowledge myself security for costs, at the instance of the plaintiff in the above suit.

WM. G. ENGLAND.

9 The plaintiff's agent having made affidavit that the property sued for, and mentioned in the complaint, belongs to the plaintiff, and having given bond in the sum of twenty thousand dollars, approved by me, with condition as required by law, the marshal is required to take the property mentioned in the complaint into his possession, unless the defendant give bond, with sufficient security, with condition as provided by law; the bond to be in the amount of twenty thousand dollars.

N. W. TRIMBLE, *Clerk.*

Marshal's return.

Received the writ of "detinue," hereunto attached, on the 13th day of March, 1868; and on the 17th day of March, 1868, I took possession of all the property therein described. The defendant, De Forrest Richards, having failed to file bond for the same within the five days allowed him by law, I delivered the same property, on the 24th day of March, 1868, to the authorized agent of the plaintiff, A. B. Wood, on his executing and delivering to me the bond enclosed herewith.

R. W. HEALY, *U. S. Marshal,*
By H. COCHRANE, *Deputy.*

MARCH 25*th*, 1868.

10 Served copy of this writ on the defendant, De Forrest Richards, March 17th, 1868.

R. W. HEALY, *U. S. Marshal,*
By H. COCHRANE, *Deputy.*

Defendant's plea.

Circuit court of the United States, southern district Alabama, Mobile.—April term, 1868.

A. B. WOOD, pl'ff,
vs.
DE FORREST RICHARDS, def't.

And now said defendant comes, and, for plea, says he is not guilty.

And now the defendant comes into court and further says that he denies that the property named in the schedule hereto annexed, marked "P," and is named and described in the writ in the above-entitled action, is the property of the plaintiff, or any part thereof, or that he has any interest therein, or that he hath any legal claim thereto, or that he had a right to the possession thereof, or that he is entitled to any damage of the defendant for its detention, or for the use thereof, for or during any length of time, or that the said plaintiff is entitled to any amount
11 for hire or use thereof, or that said d'f't wrongfully detained said property, or any part thereof.

And the defendant further says that the property named in the writ

in this action, which is named in said schedule, being only what the defendant had in his possession, or which he exercised any control before or at the date of the writ in this action, belongs to Ann. B. Jarvis, of the town of Weathersfield, in the county of Windsor, and State of Vermont; that she received a mortgage from J. De Forrest Richards, of Wilcox County, and State of Alabama, upon said property; which said mortgage was given for a good and valuable consideration, and was duly and legally executed and delivered, bearing date the fourth day of March, A. D. 1867, and recorded on the twenty-second day of April, A. D. 1867, in the office of the judge of probate, at Camden, in said Wilcox County, in book of mortgages No. one, pages 350 and 351; and, also, one other mortgage bearing date the fourth day of March, A. D. 1867, and recorded on the twenty-second day of April, A. D. 1867, in the office of the judge of probate at Camden, in said Wilcox County, in book of mortgages, No. one, pages 353, 354, and 355; and, also, another mortgage, bearing date the sixteenth day of January,
12 A. D. 1868, and recorded in said probate office, in book of mortgages, pages 406 and 407; which said mortgages are marked respectively "G," "H," "I."

And the said defendant further says that he was duly and legally appointed by said Jarvis to be her true and lawful attorney in her stead, and for her to take possession, care of, and sell and dispose of said property, by an instrument in writing, bearing date the twenty-ninth day of January, A. D. 1868; which said instrument is marked "J."

And the defendant further says that the said property which he had in his possession, or over which he exercised any control, was attached and taken possession of by A. G. Richardson, esq., then acting sheriff in and for said county of Wilcox, on or about the sixth day of March, A. D. 1868, on and by virtue of a writ bearing date the fifth day of March, A. D. 1868, and returnable to the circuit court of said Wilcox County on the third Monday of April current, at the court-house in Camden, and in favor of C. L. Bartlett & Co., of Boston, Massachusetts, plaintiffs, and against W. G. England & Co., a firm doing business in Mobile, in said Alabama, defendants, which said action or suit
13 is now pending in the said circuit court, in said county of Wilcox; a copy of which said writ is marked "D."

And said defendants further says that or about the time said acting sheriff attached or levied upon said property, on said writ, in favor of said Bartlett & Co., this defendant, as attorney and agent of said Jarvis, made claim to the said property, and made a legal and proper affidavit of the same, bearing date the sixth day of March, A. D. 1868, a copy of which is marked "C;" and defendant, also, executed a replevy bond, as attorney for said Jarvis, to said C. L. Bartlett & Co., in due form of law; a copy of which said bond is marked "B;" whereupon said acting sheriff turned over said property, attached by him as aforesaid, to this defendant, as attorney for said Jarvis, to have said property forthcoming for the satisfaction of the said attachment, (Bartlett & Co. vs. England & Co.,) if it be found liable therefor; and that while this said defendant, De Forrest Richards, was holding said property, turned over to him by said acting sheriff as aforesaid, as attorney for said Jarvis, and before it had been determined or found whether said property was liable for the satisfaction of said attachment on the
14 writ in favor of C. L. Bartlett & Co. vs. W. G. England & Co. aforesaid, against the protest of this defendant, Richards, this property was levied upon and taken possession of by the deputy of the United States marshal, on and by virtue of the writ in this action, (Wood

vs. Richards,) and that no demand had ever been made for said property upon this defendant by the plaintiff, Wood.

And the defendant further says that previous to the levy and attachment by said deputy of the United States marshal, on the writ in this action, all the several aforesaid mortgages had been foreclosed, and all of right of redemption of said property had been relinquished by the mortgagor, Richards, by a paper writing, bearing date the sixteenth day of March, A. D. 1868, marked "K."

And the said defendant further says that all the property named in the writ in this case, over which he exercised any control, and is embraced in said schedule, and was taken from him by the said deputy of the United States marshal, as aforesaid, was the property of the said Jarvis, and that she had then, and still has, a right to the possession thereof.

And the defendants further says that all that part of the prop-
15 erty named in the writ in this action, and not named in said schedule, he never had in his possession, nor did he ever exercise any control over it whatever, except one horse, called "Marsh horse," which was said defendant's own private property; and, this, the said deputy of the United States marshal had notice of at the time of the service of the writ in this action as aforesaid.

(Signed) DE F. RICHARDS.

Sworn to and subscribed this 25th day of April, 1868.

N. W. TRIMBLE, *Clerk.*

Filed 25th day of April, 1868, by consent of parties.

N. W. TRIMBLE, *Clerk.*

16 *Defendant's plea in abatement.*

In the circuit court of the United States for the southern district of Alabama, at Mobile.—April term, 1868.

A. B. WOOD, plaintiff,
vs.
DE FORREST RICHARDS, defendant.

And the said defendant, in his own proper person, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because, he says, that the said supposed cause of action, (if any such have accrued to the said plaintiff,) or the paper, promissory notes, in writing, upon which said supposed cause of action is founded on the property of a resident citizen of said State and district, to wit, the property of William G. England, or to a certain partnership composed of Wm. G. England and others, under the style and name of Wm. G. England & Co., doing business in and resident citizens of said district, the said defendant being also a resident citizen of said district.

That the said supposed cause of action, (if any such have accrued to the said plaintiff,) or the paper notes in writing, upon which said supposed cause of action is founded, has been transferred, assigned, sold,
or given to said plaintiff, who claims to be a citizen of the State
17 of New York, by the said Wm. G. England or the said Wm. G. England & Co., citizens of the State of Alabama, for the purpose, as defendant believes, of conferring fraudently jurisdiction on said court, the said defendant being a citizen of said State of Alabama.

And this the said defendant is ready to verify. Wherefore he prays judgment whether this court can or will take further cognizance of the aforesaid action.

And the said defendant for further plea in short, by consent, pleads non detinet, with leave to set up any special matter of defence.

(Signed) DE F. RICHARDS,
Defendant.

Sworn to & subscribed before me this the 24th day of April, A. D. 1868.

N. W. TRIMBLE, *Clerk.*

Filed April 25th, 1868.

N. W. TRIMBLE, *Clerk.*

18 *Defendant's aff'd't to plead further.*

In the circuit court of the U. States for the southern district of Alabama, at Mobile.—April term, 1868.

A. B. WOOD, p't'f,
vs.
DE FORREST RICHARDS, def'd.

In this case the defendant makes oath and states—

That he has been unable to prepare his pleas to this action within the time prescribed by the court for the following reasons:

That he employed Timothy Pierson and James Q. Smith as his counsel to put in his defence. That said Pierson resides in Wilcox County, and left said county in time to be in Mobile before the time allowed for putting in pleas, but did not reach Mobile, in consequence of the storm on Tuesday night, the 14th of April—the steamboat that the said Pierson was on had to be tied up the quarter part of said night.

That said Smith resides in Montgomery, and was unable to be in Mobile until Wednesday of the first week of court, and in a few hours after his arrival in Mobile made a motion for further time to plead, but the court then refused to hear the motion.

That he believes that he has a good defence going to the whole of the cause of action, and this application for time to plead is not made to hinder or delay the trial thereof.

(Signed) DE F. RICHARDS.

Sworn to & subscribed this the 24th day of April, A. D. 1868.

N. W. TRIMBLE, *Clerk.*

Filed April 25th, 1868.

N. W. TRIMBLE, *Clerk.*

19 *Notice.*

In circuit court of U. States, southern district of Alabama.—April term, 1868.

A. B. WOOD
vs.
DE FORREST RICHARDS.

To A. B. Wood, plaintiff, or his proctors of record, Messrs. Smith & Herndon:

You will please take notice that you are required to produce on the trial of this cause the original papers upon which this cause of action is founded, or any assignment or transfer thereof to the plaintiff; otherwise copies thereof will be introduced as evidence.

(Signed) DE FORREST RICHARDS,
By his att'y, SMITH & PIERSON.

AP'L 24*th*, 1868.

Marshal's return.

Rec'd, M. O., April 24th, 1868, and executed April 25th, 1868, by serving copy on T. H. Herndon, of Smiths & Herndon.

R. W. HEALY, *U. S. Marshal,*
By J. J. WATSON, *Deputy.*

20 *Affidavit of plaintiff's agt.*

Circuit court of U. S. at Mobile.

A. B. WOOD
vs.
DE FORREST RICHARDS.

W. G. England, being sworn, says that the plaintiff in this cause resides in the city of New York; that since the suit has been brought there has not been time to prepare it for a trial.

The material witnesses for pl'ff, without whose evidence the plaintiff cannot go safely to trial, are Charles S. Bartlett, of Boston, Massachusetts; Mrs. Jarvis, of Boston, Massachusetts, but whose christian name or particular place of residence is now unknown; R. H. Lockhart, of Marengo County; and A. B. Cooper, of Wilcox County, Ala.

Affiant says the pl'ff can prove by Lockhart that the defendant surrendered the property involved in this suit to affiant, W. G. England, under the mortgage, which will be given in evidence, & then, in order to regain the possession, had two suits brought in the State court, & had the property seized. One suit was brought in the name of said Bartlett, the other in the name of Mrs. Jarvis. This last was in the way of a claim, under the statutes of Alabama, made in the other
21 suit. All this was a fraudulent contrivance of said Richard to regain possession of the property for himself by the above of process of the State court. A. B. Cooper will prove substantially the same; said Lockhart & Cooper cannot prove the intent with which the suits were brought, but will prove the other facts above set forth.

Bartlett & Mrs. Jarvis will prove that the suits instituted in their names were mere fraudulent contrivances of Richards to get the property for himself.

Since the institution of this suit time has not been sufficient to get the testimony of these parties. It can be had by the next term of this court, & a continuance is not asked for delay but for justice.

He can prove by Lockhart & Cooper further that so soon as Richards got the property under the proceedings of the State court before-mentioned, he was running it off to avoid the mortgage asserted in this suit, & that the property was obtained in the State court on bonds which were irresponsible.

(Signed) WM. G. ENGLAND.

Subscribed & sworn to before me this 30th day of May, 1868.
N. W. TRIMBLE, *Clerk.*

Filed April 30th, 1868.
N. W. TRIMBLE, *Clerk.*

22 *Demurrer of plaintiff.*

In the circuit court of the United States for the fifth judicial circuit & the southern district of Alabama, at Mobile.—April term, 1868.

A. B. WOOD, plaintiff,
vs.
DE FORREST RICHARDS, defendant.

And the said plaintiff saith that the said plea in abatement of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to prevent this court from taking cognizance of said action, and that the said plaintiff is not bound by the law of the land to answer the same. And this he is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and that the said defendant may answer further to the said declaration, &c.

And for special cause of demurrer, plaintiff says that he is entitled to maintain his action, notwithstanding the matters set forth in said plea.

(Signed) SMITHS & HERNDON.

Filed May 1st, 1868.

N. W. TRIMBLE, *Clerk.*

23 *Judgment.*

A. B. WOOD
vs.
DE FORREST RICHARDS.

This day came the parties to the above-entitled cause, by their attorneys, and the demurrer of the plaintiff's plea in abatement being argued and considered by the court, and it appearing to the court that the matters contained in said plea are sufficient in law to preclude the said A. B. Wood from having and maintaining an action against the said De Forest Richards in this court, and that the court has no jurisdiction of the same, it is ordered that the demurrer of the plaintiff to the plea of the defendant be overruled; and the plaintiff failing and declining to answer to the defendant's said plea, it is considered by the court that the suit of the plaintiff be quashed for want of jurisdiction of this court to the said cause, and that the defendant go hence and recover of the plaintiff his costs in this behalf incurred, for which execution may issue.

(Signed) RICH'D BUSTEED, *Judge, &c.*

24 *Petition of plaintiff for writ of error.*

U. S. circuit court, sou. dist. of Alabama.

A. B. WOOD
vs.
DE FORREST RICHARD.

To the Honorable Richard Busteed, judge of the district court of the United States, exercising circuit court honors, & sitting in & holding the circuit court of the United States at Mobile, for the fifth judicial circuit and southern district of Alabama:

Your petitioner, A. B. Wood, of the State of New York, shows to your honor that in said circuit court of the United States, now sitting in Mobile, and in the case of your petitioner against De Forrest Richards, the case being for the recovery of specific personal property, and of

damages for the detention thereof, for more particular description whereof references is made to the records and proceedings of said cause, your honor, sitting and presiding in said circuit court rendered judgment final for defendant, said De Forest Richards, on the plea of said defendant to the jurisdiction of said court.

And now your petitioners comes and asks for a writ of error issue and supersedeas of said judgment to the Supreme Court of the United
25 States, and says he will, within the time prescribed by law, give the necessary bond as required by law for the prosecution of his writ of error to effect and for a supersedeas and staying the execution of said judgment; which said bond, with good and sufficient security, he here tenders.

And your petitioner prays your honor to cause said writ of error & supersedeas to issue, and that you will make all other orders in the premises which may be necessary and proper.

And your petitioner, as in duty bound, will ever pray, &c.

(Signed) A. B. WOOD,
By SMITHS & HERNDON,
His Attorneys of record in said cause.

Order of court.

Let the writ issue as prayed for within.

(Signed) RICH'D BUSTEED, *Judge, &c.*

Bond for costs and supersedeas to be taken in penal sum of $2,000.

26 *Appeal bond.*

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

A. B. WOOD
vs.
DE FORREST RICHARDS.

Know all men by these presents, that we, Augustus B. Wood, William G. England, Abner M. Godfrey, Caleb Price, and Lawrence P. Hill, are held and firmly bound unto De Forrest Richards in the sum of two thousand dollars; which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 11th day of May, eighteen hundred and sixty-eight. Whereas the above-named Augustus B. Wood hath prosecuted a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the fifth judicial circuit and southern district of Alabama:

Now, therefore, the condition of this obligation is such, that if the above-named Augustus B. Wood shall prosecute his said writ of error to effect, and answer all damages & costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

A. B. WOOD, [SEAL.]
By WM. G. ENGLAND, [SEAL.]
Att'y in fact.
A. M. GODFREY. [SEAL.]
CALEB PRICE. [SEAL.]
LAW. P. HILL. [SEAL.]

Sealed and delivered in the presence of—

Approved:
(Signed) RICH'D BUSTEED, *Judge, &c.*

The within bond is approved this May 11th, 1868.
NATHANIEL W. TRIMBLE,
Clerk U. S. Cir. Ct. So. Dist. Ala.

27 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between A. B. Wood and De Forrest Richards, a manifest error hath happened to the great damage of the said A. B. Wood, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may leave the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of
28 right and [and] according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] NATHANIEL W. TRIMBLE,
Clerk of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

29 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between A. B. Wood and De Forrest Richards, a manifest error hath happened to the great damage of the said A. B. Wood, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the records and proceed-

ings aforesaid being inspected, the Supreme Court may cause farther to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

30 Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the eleventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

NATHANIEL W. TRIMBLE,
Clerk of the Circuit Court of the United States for the Fifth Judicial Circuit and Southern District of Alabama.

Filed, as a copy for defendant in error under the act of Congress & the rules of the Supreme Court of the United States, May 11th, 1868.

31 *Citation to defendant.*

UNITED STATES OF AMERICA, *ss:*

To De Forrest Richards, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, wherein A. B. Wood is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 11th day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] RICHARD BUSTEED, *Judge, &c.*

32 (Indorsed:) United States of America, ss. To De Forrest Richards.

Rec'ed M. O., June 28th, 1868. Executed the 16th Nov., 1868.
R. W. HEALY, *U. S. Marshall,*
By JNO. D. CALDWELL, *Dep'y.*
Service, $2 00. Milage, 17 00. D. P. 41.

33 *Certificate of clerk.*

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

I, Nathaniel W. Trimble, clerk of the above-mentioned court, hereby certify that the foregoing twenty-nine pages contains a true and correct transcript of the record and proceedings in the case of A. B. Wood versus De Forrest Richards, as the same appear on record in my office.

In testimony whereof, I hereunto set my hand and cause the seal of said court to be affixed this the 10th day of December, ine the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] NATHANIEL W. TRIMBLE,
Clerk Cir. C'rt. So. Dist. Ala.

34 (Indorsed:) Sup. Ct. U. S. A. B. Wood vs. De Forrest Richards. P. Phillips, atty for appellant.

Supreme Court of the United States.

DECEMBER TERM, 1869.

A. B. WOOD, PLAINTIFF IN ERROR,
vs.
DE FORREST RICHARDS.

36-

J. De Forrest Richards, being indebted to W. G. England & Co., on certain notes and acceptances, executed to that firm a mortgage of the stock and crops on his plantation to secure their payment.

This mortgage was assigned by England & Co. to Wood.

The same property had been previously mortgaged by Richards to Mrs. Jarvis, and had been surrendered by him to the defendant, as the attorney of Mrs. Jarvis.

Wood, by virtue of his mortgage title, brought this action of *detinue* against the defendant for the property covered by the mortgage.

All the members of the firm of England & Co., and the defendant, were then and are still citizens of Alabama, and the plaintiff, Wood, a citizen of New York.

The defendant insisted that the circuit court had not jurisdiction of the action, and interposed a plea to that effect, which was sustained by the court.

The only question here is as to the correctness of that decision.

The defendant claims—

1. That this is an action "to recover the contents of a *chose* in action," and therefore within the restriction of the jurisdiction of the circuit court, by the 11th section of the

judiciary act of 1789; and as the assignors of the mortgage could not have maintained the action in the circuit court, neither can the assignee.

In all mortgages the debt is the principal thing; the mortgaged property is a mere incident—a security for the payment of the debt.

Even after breach of condition the mortgagor is regarded as the true owner, and the mortgagee as having only a chattel interest.

The mortgagee is only entitled to his debt, and can only pursue or recover the mortgage property for that purpose.

Hence all proceedings, in whatever form, against the mortgage property, whether at law or in equity, are for the purpose of *enforcing payment*, or, in the language of the statute, "to recover the contents" of the debt secured by it. If the mortgagee, or his assignee, recovers the mortgaged property at law, by ejectment or *detinue*, he holds it then merely as a security for his debt, and still subject to an account with the mortgagor for it.

The difference between an action directly upon the note, or other form of mortgage debt, and one for the property or security, is one of form merely; the object is the same in both—to compel payment of the mortgage debt.

In Sheldon *vs.* Sill, (8 How., 441,) it was held by this court that a bond and mortgage was a *chose in action* within the meaning of the statute, and that a bill to foreclose the mortgage could not be sustained by an assignee in the circuit court, when it could not be by the assignor.

It has sometimes been assumed that in ejectment or other form of action, directly to recover the mortgaged property, it was different, and there are some *dicta* of judges to the same effect; but I find no case where it has been made the point of decision.

I submit that the principle of the decision in Sheldon *vs.* Sill is decisive of this; and there is no substantial reason for making the form of the proceeding to compel an application of the mortgaged property to the payment of the mort-

gage debt the criterion of jurisdiction, which was intended to be governed wholly by other considerations.

2. But if this action by the assignee of the mortgage be held not within the statute, then we say that the assignment by England & Co. to Wood was not *real*, but was merely *nominal* and *fictitious*, and for the sole purpose of working a change of jurisdiction. This is substantially alleged in the defendant's plea, and confessed by the demurrer.

It was held, at an early day, that a conveyance of land, (which, of course, could not be claimed to be an assignment of a *chose in action* within the statute,) which was colorable, and for the mere purpose of getting the title into the name of a party who could sue in the Federal courts, was wholly ineffectual for that purpose; that it was a fraud upon the law and upon the court. (Hurst *vs.* McNeil, 1 Wash. C. C., 70; Maxwell, lessee, *vs.* Levy, 2 Dallas, 381; same case, 4 Dallas, 330.)

The authority of these cases was questioned by Judge Story in Briggs *vs.* French, (2 Sumner, 251;) and he intimates that a conveyance of land to a citizen of another State for the mere purpose of bringing a litigation in respect to it in the Federal courts, and when the conveyance is wholly in trust for the grantor, would give the court jurisdiction. But in that case there was not the slightest evidence to impeach the consideration of the conveyance, nor that it was given for the purpose of enabling the suit to be brought in the Federal court.

What was said, therefore, by Judge Story, was purely *obiter;* the case before him raised no such question.

But the question was fully settled by this court in the case of Smith *et al. vs.* Kernochen, (7 Howard, 198.)

Mr. Justice Nelson, who pronounced the judgment of the court, says: "The true and only ground of objection in all these cases is, that the assignor or grantor, as the case may be, is the real party in the suit, and the plaintiff on the record but nominal and colorable, his name being used

merely for the purpose of jurisdiction. The suit is, then, in fact, a controversy between the former and the defendants, notwithstanding the conveyance; and if both parties are citizens of the same State, jurisdiction, of course, cannot be upheld." The cases in Dallas and Wash. are cited with approbation.

The later case of Deshler *vs.* Dodge, (16 Howard, 622,) is not in conflict with either of the positions taken. The point decided was that the purchaser of personal property might maintain an action in the circuit court against one who wrongfully withheld the property from him, although the former owner could not.

It is true the property sold was packages of bank notes; but the action was not against the maker or any party to them to enforce payment or "*recover their contents,*" but against a holder to recover the notes themselves.

In this case the plaintiff could obtain no title to the mortgaged property, except by becoming the purchaser and assignee of the mortgage and mortgage debt, and could only pursue or recover the mortgaged property for the purpose of applying it in payment of the mortgage debt.

L. P. POLAND,
for Defendant.